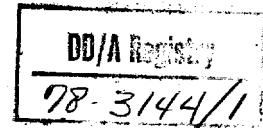
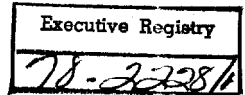


78-2654
PAGE



11 SEP 1978



MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Privacy Act of 1974: Supplemental Guidance
for Matching Programs

REFERENCE : D/OMB memo to Heads of Executive Departments
and Agencies dtd 2 Aug 78, same subject

DD/A Registry
File Security 5-1

1. Action Requested: Your approval of the recommendation contained in paragraph 4 concerning supplemental guidance for matching programs.

2. Background: During mid-1977 the Office of the Inspector General in the Department of Health, Education and Welfare began a program to reduce fraud and unauthorized payments in certain Federal assistance programs. A major part of this program, called "Project Match" involved a computerized comparison of files of recipients of aid to families with dependent children with lists of Federal employees maintained by the Civil Service Commission and the Department of Defense.

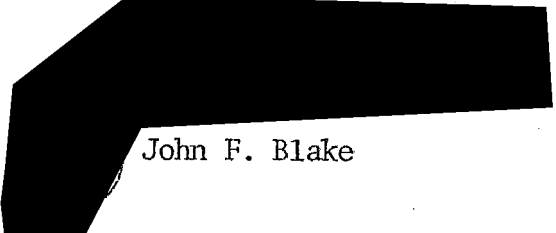
The original "Project Match" was subject to the Privacy Act of 1974 because it was performed by a Federal agency using Federal personnel records. OMB agreed that disclosures of computer tapes of personnel files to HEW can be covered as a "routine use" as defined in the Privacy Act. However, as the matching programs present the potential for significant invasion of personal privacy, OMB undertook the development of guidelines to be used by agencies in future matching programs. HEW has not acquired additional records for matching programs other than Project Match. Two (2) more matching programs planned by HEW were suspended pending development and issuance of final guidelines by OMB. Referent memorandum provides supplemental guidance and requests our views/comments about them.

Action passed to Compt 10/20/78

3. Staff Position: At the September 1977 meeting of the Interagency Advisory Group, CSC, the officer-in-charge of Project Match operations, Mr. Paul Marion, Director of the HEW Audit Staff, discussed the program activities with the attending Federal personnel representatives. Mr. Marion acknowledged to the CIA representative that CIA, FBI, and other sensitive agencies could not provide employee rosters and stated that he did not expect or request that CIA participate. The Agency, therefore, did not take part in Project Match. (Note: Names of Agency employees are included in the definition of Intelligence Sources and Methods as defined in Section 6 of the CIA Act of 1949, as amended.)

4. Recommendation: I recommend that no written comments about the Supplemental Guidance be submitted. It is suggested, however, that the Office of the Comptroller contact the OMB Liaison Officer and indicate that we are not making comments because the Agency is not a participant in the matching programs.

STATINTL


John F. Blake

STATINTL The recommendation contained in paragraph 4 is:


☒ APPROVED () DISAPPROVED


Deputy Director of Central Intelligence

12 SEP 1978

Date

Distribution:

- Original - Return to D/Pers
 - 1 - DDCI
 - 1 - ER
 - 2 - DDA
 - 1 - OP/Control Division
 - 1 - D/Pers (w/held)
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ILLEGIB

UNCLASSIFIED	CONFIDENTIAL	SECRET	
OFFICIAL ROUTING SLIP D.D/O 78-3144/1			
TO	NAME AND ADDRESS	DATE	INITIALS
1	Deputy Director for Administration		
2	[REDACTED]		
3	Room 7D18, Hqs.		
4			
5			
6			
ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE
Remarks: I have talked to [REDACTED] about the attached and reminded her that we had dealt with this verbally. She agreed to get in touch with [REDACTED] and get us off the hook. I trust we need do nothing further on this.			
HERE TO RETURN TO SENDER			
NAME, ADDRESS AND PHONE NO. C/AC/O/Compt			DATE 10/20/78



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 2, 1978

Executive Registry

782228

DD/A Registry

78-3144

DD/A Registry

File

Security 5-1

MEMORANDUM TO HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Privacy Act of 1974: Supplemental Guidance for
Matching Programs

This memorandum requests the views of your agency on the attached supplement to the OMB Guidelines on the Privacy Act of 1974.

The supplemental guidelines have been developed to establish procedures for the conduct of "matching programs," which are computerized comparisons of personal records maintained by various agencies, for the purpose of curtailing fraud or unauthorized payments under Federal programs, or to aid in collecting debts owed the Federal Government. A summary of the background of the guidelines, along with its full text, is attached.

Your views are requested by September 14, 1978, and should be submitted to the Information Systems Policy Division, Room 9002, New Executive Office Building, Washington, D.C. 20503. Any questions may be directed to the Division at (202)395-4814.

Sincerely,

James T. McIntyre, Jr.
Director

Attachment

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974: Supplemental Guidance for
Matching Programs

Request for Comments

AGENCY: Office of Management and Budget

ACTION: Request for comments on proposed supplement
to OMB Privacy Act Guidelines

SUMMARY: These guidelines establish procedures and limitations for matching programs carried out by Federal agencies to reduce fraud or unauthorized payments in a Federal program, or to collect debts owed to the Federal Government; establish reporting requirements for matching programs carried out by Federal agencies for other purposes; and establish reporting requirements for certain disclosures to non-Federal entities for purposes of matching. The procedures have been developed to assure compliance with the Privacy Act and to balance concerns for personal privacy with the need to maintain the integrity and efficiency of Federal benefit programs.

DATE: Comments must be received on or before September 14, 1978.

ADDRESS: Written comments should be addressed to the Information Systems Policy Division, Office of Management and Budget, Room 9002, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Leslie Greenspan,
Information Systems Policy Division, Room 9002, NEOB,
(202) 395-4814.

SUPPLEMENTARY INFORMATION: During mid-1977, the Office of the Inspector General in the Department of Health, Education and Welfare began a program to reduce fraud and unauthorized payments in certain Federal assistance programs. A major part of this program, called "Project Match," involved a computerized comparison of files of recipients of Aid to Families with Dependent Children (AFDC) with lists of Federal employees maintained by the Civil Service Commission and the Department of Defense. Federal employees who appeared to be receiving improper AFDC payments were investigated to determine whether they were receiving benefits to which they were not entitled.

The proponents of Project Match asserted that it was necessary to preserve the integrity of Federal assistance programs, to prevent or curtail fraud and abuse, and that it would result in considerable financial benefits to the Government. Critics of the program questioned whether the matching was an invasion of privacy; whether the benefits were great enough to outweigh either the privacy considerations or the cost of the matching itself; and whether the due process rights of the subjects of the matching were being observed. The issue is complex, and interests on both sides are compelling. The guidelines attempt to balance the competing interests involved.

Project Match was subject to the Privacy Act of 1974 because it was performed by a Federal agency using Federal personal records. The Office of Management and Budget has responsibility for assisting agencies in interpreting the Privacy Act. When asked for its views on the appropriate basis for making disclosures of computer tapes of personnel files to HEW, OMB advised that a "routine use" was the most appropriate mechanism. The Act defines a routine use as a disclosure, made without the advance written consent of the subject of the record, which is compatible with the purpose for which the record was collected (5 U.S.C. 552a(a)(7)). Before an agency can make a disclosure pursuant to a routine use, it must publish in the Federal Register a notice describing it, and allow 30 days for public comment (5 U.S.C. 552a(e)(11)).

While Project Match disclosures met the requirements for a routine use under the Privacy Act and significant benefits could be gained it is also clear that matching programs present the potential for significant invasions of personal privacy. Because of its responsibilities under the Privacy Act, and at the request of the interested agencies and the relevant congressional committees, OMB in conjunction with the Domestic Policy Staff undertook the development of guidelines to be used by agencies in future matching programs. During the period of the formulation of the guidelines, HEW has not acquired additional records for matching programs other than Project Match. Two additional matching programs planned by HEW were suspended pending development of these guidelines. The two programs are (1) a matching of the the Federal employment rolls with the list of defaulters under the Guaranteed Student Loan Program, and (2) a comparison of the Federal employment rolls with the old age and disability recipients under programs of Social Security Administration. OMB has advised

HEW, DOD, CSC that we would not conduct these additional matching programs providing they are conducted in accordance with the proposed guidelines, but that no further matching programs should be conducted until public comments on the proposed guidelines are evaluated and final guidelines are issued.

The guidelines are advisory rather than mandatory, for two reasons. First, OMB's responsibility under the Act is to provide oversight and assistance, rather than to be a regulatory body, and second, the Privacy Act places the final responsibility for agency actions with the agencies themselves. It is OMB's view that in situations such as this, an agency can best decide whether to disclose a record, and that OMB should not mandate or prohibit disclosures of records, at least until more experience with matching programs is gained. OMB expects, however, that agencies will follow this guidance.

During the comment period, OMB will continue to discuss with the Internal Revenue Service the interplay of these guidelines with existing similar requirements for the Internal Revenue Service.

The text of the guidelines is set forth below.

OFFICE OF MANAGEMENT AND BUDGET

Implementation of the Privacy Act of 1974
Supplementary Guidance

The following sets forth guidelines on matching programs conducted by Federal agencies, and further supplements the Office of Management and Budget guidelines for implementing section 3 of the Privacy Act of 1974. (Federal Register, Volume 40, Number 132, dated July 9, 1975, pp. 28949-28978, as supplemented in the Federal Register, Volume 40, Number 284, dated December 4, 1975, pp. 56741-56743).

SECTION 1. SCOPE.

These guidelines establish procedures and limitations for matching programs carried out by Federal agencies to reduce fraud or unauthorized payments in a Federal program, or to collect debts owed to the Federal Government; establish reporting requirements for matching programs carried out by Federal agencies for other purposes; and establish reporting requirements for certain disclosures to non-Federal entities for purposes of matching.

These guidelines do not authorize activities which are not permitted by law; nor do they prohibit activities expressly required to be performed by law. The procedures and limitations set forth in these guidelines apply, even when a law authorizes or requires a matching program to be carried out, to the extent that these procedures and limitations would not frustrate the legislation.

SECTION 2

DEFINITIONS

Approved For Release 2001/11/23 : CIA-RDP81-00142R000700040014-9

(a) General. The definitions in the Privacy Act apply to these guidelines except to the extent that they are modified by this section.

(b) Additional Definitions.

(1) A "matching program" is a procedure carried out by a Federal agency under which all or substantially all of the records within a system of records maintained by the agency, or within a subsystem of it, are compared by computer with--

(A) all or substantially all of the records within a system of records (or subsystem) maintained by another agency, or

(B) all or substantially all of any other group of records (or subsystem) that would be covered by the Privacy Act if the records were maintained by an agency.

Subsection (B) includes as a "matching program" a program which would otherwise not be covered by these guidelines for the sole reason that a system is maintained or under the control of a matching source (see Section 2(b)(3)) which is not an agency, e.g., a State or local unit of government, or a "person" [5 U.S.C. 551(2)].

A "matching program" does not include a computer matching carried out by an entity which is not an agency; nor does it include computer matches which are carried out with records obtained within the agency; nor does it include the matching of records within a system of records with other Federal records which are not from a system of records. (See, however, Section 6 which establishes certain reporting requirements for these activities).

A "matching program" includes the disclosures which are made to and from a "matching agency" (see Section 2(b)(2)) to carry out a matching program or as a result of a matching program.

A "matching program" does not include, for example, checks, regardless of the number of such checks, on specific individuals in response to an application for benefit or as a result of the acquisition of information which raises questions concerning a specific individual's eligibility which are reasonably contemporaneous with that application or acquisition.

(2) A "matching agency" is the agency which is carrying out (or which seeks to carry out) a matching program.

(3) A "matching source" is an entity (including an agency) which discloses or provides records to a matching agency to conduct a matching program.

SECTION 3. REQUIREMENTS FOR MATCHING PROGRAMS--MATCHING AGENCY.

(a) General. An agency which intends to carry out a matching program to reduce fraud or unauthorized payments in a Federal program, or to collect debts owed to the Federal government, should initiate and conduct the program in accordance with these guidelines.

(b) A matching agency should carry out a matching program--

(1) only if there is no other way to accomplish the purposes of the matching programs without incurring substantially greater costs;

(2) only in accordance with the Report on New Systems (see Section 3(b)(3)), and only if the matching program will be fair and equitable to the individuals involved and will minimize any "chilling" effect upon the exercise of individual rights;

(3) either by (a) establishing a new system of records for each matching program (a "matching system"), or (b) by submitting a Report on New Systems in accordance with subsection (c) of the Act and OMB Circular A-108, if an existing system is amended; and

(4) only if there will be a demonstrable financial benefit to the Federal government from the matching program, and the benefit significantly outweighs any harm to individuals. Benefits may include dollar savings (from the reduction of the numbers of

unqualified recipients; from deterrence of those who would seek benefits for which they are not eligible; from expected improvements in deficient Federal program operation, etc.) and dollar recoveries from those who have received benefits to which they were not entitled. Any costs associated with the matching program, including those of the matching, collection, litigation, etc., should be deducted from the benefits.

(c) In addition to the requirements set forth in OMB Circular A-108 and in these guidelines, the Report on New Systems for a new or a changed system of records should include the following:

- (1) an explanation of why the matching program is needed;
- (2) an explanation of why the matching program can reasonably be expected to meet its objectives;
- (3) a description of the other means of achieving the objectives of the matching program that the matching agency has used or considered;
- (4) a description of the procedures pursuant to which the matching program will be carried out, including a description of the provisions for safeguarding information, and for protecting personal privacy and other individual rights;

- (5) a statement of when the matching program will begin, and when it will end;
 - (6) a description of the disclosures of records which will be made to or from the system, including the legal justification for any routine use involved;
 - (7) a description of any new information which will be maintained as a result of the matching program;
 - (8) an identification of each proposed matching source for the program; a copy of each routine use each source proposes for the matching program; and an explanation of every other authority by which the matching source furnishes records; and
 - (9) a discussion of those findings set forth in Sections 3(b)(2) and (4).
- (d) The matching agency should assure before expenses are incurred that there is a written agreement among the participating agencies concerning the expenses of the matching program that each will bear.
- (e) Matching programs should be carried out by officials of the matching agency and not by contract or grant.
- (f) The number of persons with access to information used in the matching program should be limited to the minimum number necessary to accomplish its purposes, and screening procedures for such employees should be

established where appropriate, taking into account the potential for harm or disadvantage that a disclosure of the information might entail.

(g) The matching program should minimize the number and extent of the disclosures of information which pertain to identifiable individuals.

(h) The matching agency should not collect records for a matching program from a matching source other than in accordance with these guidelines.

SECTION 4. DISCLOSURES, ACCOUNTING AND DESTRUCTION OF RECORDS.

(a) Disclosures of records from a matching program should be made only with the prior written approval of the matching agency official who is responsible for the system of records.

(b) Except when specifically required by law, there should be no disclosure by the matching agency of records obtained from a matching source other than as provided in this Section.

(c) There should be no disclosure of those records which result from a matching program unless the disclosure is necessary to conduct the matching program or to achieve its purposes, is limited to the minimum number of persons, and is limited to the minimum amount of information.

(d) With regard to disclosures pursuant to the "routine use" provisions of the Act [5 U.S.C. 552a(b)(3)] of those records which result from a matching program, the agency should:

- (1) make the routine use as specific and limited as possible, and, wherever possible, of a limited duration;
- (2) clearly state as a part of the routine use that the records to be disclosed include records which have resulted from a matching program;
- (3) publish with the Federal Register notice of the routine use an explanation of the legal justification for the routine use;
- (4) provide with the Federal Register notice of the routine use an explanation of why the records which may be disclosed pursuant to the routine use cannot be disclosed without identifying individuals;
- (5) republish in the Federal Register, following consideration of the comments received, an explanation of the comments received and the changes made in sufficient detail to permit an understanding of the basis for the acceptance or rejection of each comment by the agency; and
- (6) ensure that the disclosure is consistent with any conditions placed upon the disclosure of records by the matching source at the time the records were disclosed to the matching agency by the matching source.

(e) All disclosures of those records which result from a matching program which are specifically authorized by law but are not made pursuant to the routine use provisions of the Act, should be made in accordance with the procedures in paragraph (d) of this Section whenever possible. For example, although the procedures in (d) would not apply to each disclosure made in response to a written request by the head of a law enforcement agency, the procedures of (d) should be followed prior to the initial disclosure to the law enforcement agency.

(f) Whenever an agency discloses records which result from a matching program the agency should, as an express condition of the disclosure, set forth the following:

- (1) the use to which the records will be put by the entity to whom they are disclosed;
- (2) a stipulation that the entity receiving the records will disclose them further only where required by law or where (e.g., in the case of a law enforcement or administrative agency) such disclosure is compatible with the purpose for which the records were originally disclosed to it;
- (3) the date by which the records transferred will be destroyed, returned to the matching agency or, if it is necessary that the records be retained by the entity to which they were disclosed, a written explanation of that necessity.

(g) Compliance with these guidelines by the matching agency does not relieve that agency of compliance with the requirements of the Act, including, for example, the requirement to keep an accurate accounting of disclosures of records [5 U.S.C. 552a(c)].

(h) All records which result from a matching program should be destroyed within six months, and those records which are obtained from a matching source should be destroyed or returned to the matching source within six months of the beginning of the matching program, except for those records which are (1) necessary to the completion of pending law enforcement activities, or administrative activities which are consistent with the purposes of the matching program and are authorized by law; or (2) otherwise specifically required to be maintained by law. Any extension of the six-month period should be published, with appropriate explanation, in the Federal Register. As soon as all of the records have been turned to the matching source or destroyed, the matching agency should notify the Office of Management and Budget in writing.

SECTION 5. REQUIREMENTS FOR MATCHING PROGRAMS--MATCHINGSOURCES

(a) General. The OMB Privacy Act Guidelines in discussing Conditions of Disclosure, state in part:

Disclosure, however, is permissive not mandatory. An Agency is authorized to disclose a record for any purpose enumerated below [the exceptions to the advance written consent of the individual to whom the information pertains] when it deems that disclosure to be appropriate and consistent with the letter and intent of the Act and these guidelines.

Nothing in the Privacy Act should be interpreted to authorize or compel disclosures of records, not otherwise permitted or required, to anyone other than the individual to whom a record pertains pursuant to a request by the individual for access to it.

Agencies shall not automatically disclose a record to someone other than the individual to whom it pertains simply because such a disclosure is permitted by this subsection. Agencies shall continue to abide by other constraints on their authority to disclose information to a third party including, where appropriate, the likely effect upon the individual of making that disclosure. Except as prescribed in subsection (d) (1), (individual access to records) this Act does not require disclosure of a record to anyone other than the individual to whom the record pertains. (40 Federal Register 28949 at 28953, July 9, 1975.)

(b) Specific Requirements:

(1) A Federal matching source should review with the

matching agency the purposes of and the procedures for the matching program, and determine after such review whether to make the disclosure requested of it by the matching agency.

(2) All disclosures of records from a system of records by a Federal matching source to a matching agency pursuant to a matching system program should be made in accordance with this section and the "routine use" provisions of the Act.

(3) Unless specifically provided otherwise by law, no disclosure should be made by a matching source for a matching program unless "... the use of such record [is] for a purpose which is compatible with the purpose for which [the record] was collected."

[5 U.S.C. 552a(a)(7)].

(4) All routine uses permitting disclosures for matching programs should -

- (A) be as specific and limited as possible;
- (B) expressly state that the routine use is intended to permit the disclosure of records for a matching program;
- (C) identify the matching program;
- (D) set forth any conditions which the

matching source has established for the use of the records by the matching agency in addition to those set forth in these guidelines; and

(E) be noticed in the Federal Register with an explanation or the legal justification for the routine use.

SECTION 6. AGENCY REPORTS ON OTHER PROGRAMS.

(a) Each agency which is carrying out, or which intends to carry out, a matching program for purposes other than to reduce fraud or unauthorized payments in Federal programs, or to collect debts owed to the Federal government, should provide notice of that program to the Office of Management and Budget.

(b) Each agency which intends to disclose records from a system of records for purposes of carrying out what would be a matching program if the program were being carried out by a Federal agency, should provide notice to the Office of Management and Budget.

(c) Each agency which intends to carry out, or is carrying out, an intra-agency matching program that would be subject to these guidelines if it involved the disclosure by another agency of records to it, should provide

notice to the Office of Management and Budget.

(d) These notices should include a description of the program in sufficient detail to permit an understanding of the purposes and the procedures of the program, and should set forth the legal authority for the program and the action of the agency. The notice and description of the matching program should be submitted at least 60 days prior to the disclosure of information by the agency or 60 days prior to the initiation of the proposed program, or, as soon as practicable.

SECTION 7. SAFEGUARDS.

(a) Each matching program (including those matching programs upon which reports were made under Section 5 of these guidelines) should incorporate physical, administrative and technical safeguards against unauthorized disclosure, alteration or destruction. Safeguards should be selected commensurate with the risk and magnitude of loss, harm or disadvantage that could result from an unauthorized disclosure, alteration or destruction of the information within the matching system.

(b) The safeguards should, unless the matching source of the records agrees otherwise, provide that the records are protected at least as stringently as in the systems from which the records were obtained.

(c) Periodic audits or evaluations of the operation of these safeguards should be conducted during the matching program to assure their adequacy.

(d) The agency official who is responsible for the system should certify that based upon the audit or evaluation, the safeguards are adequate, and that they meet all applicable policies, regulations and standards.

SECTION 8. IMPLEMENTATION AND OVERSIGHT

The Office of Management and Budget will oversee the implementation of and shall review, interpret and advise upon agency proposals and actions under these guidelines.